



March 9, 2023

The Honorable Melony G. Griffith
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Support with Amendments for Senate Bill 516 – Cannabis Reform

Dear Chair Griffith:

The Maryland Wholesale Medical Cannabis Trade Association (CANMD) supports Senate Bill 516 – Cannabis Reform, with amendments. CANMD thanks the sponsors of this bill for putting a tremendous amount of work into this important issue.

CANMD represents the majority of companies licensed to grow and/or process medical cannabis in Maryland. CANMD members have worked closely with Maryland policymakers and regulators to make our medical program a safe and well-regulated one.

Marylanders in every jurisdiction except one voted in favor of the Constitutional Amendment created by the passage of House Bill 1 of the 2022 Session. Passage of the Amendment means that Maryland’s possession laws change on July 1. Marylanders also anticipate that they will be able to legally purchase cannabis and cannabis products on that date. Senate Bill 516 establishes the regulatory framework for meeting that expectation.

Importantly, Senate Bill 516 maintains focus on issues of equity and participation, building on many important social and criminal justice reforms passed last year by the General Assembly. The bill provides licensing opportunities for social equity applicants and sets policies to enhance the ability of new licensees (and entities licensed as a result of House Bill 2 of 2018 (“House Bill 2 licensees”)) to compete and thrive in the new market.

Combatting the illicit market. Commencing sales on July 1 not only meets the expectations of Marylanders, it also addresses an issue that many States have failed to address – setting policy to cut into the illicit market and allow people to purchase legal, safe and affordable products. There is an illicit market in Maryland and across the country. Once the possession limits are raised on July 1 and the public believes product is available for purchase, a regulated market needs to be available to reduce illicit sales of untested and unsafe products.

Several policy measures in Senate Bill 516 help in the effort to curb illicit sales. During the interim discussions on this issue, consultants opined that the most important factors in mitigating the impact of the illicit market are time, access, and cost. As mentioned above, the timing of starting sales on July 1, 2023 is vital. From an access perspective, utilizing existing operators and geographically dispersing new dispensary licenses across the State provides instant and, eventually, expanded points of access. Finally, Senate Bill 516 sets a reasonable tax rate that is phased-in to allow the adult-use market to take hold at competitive prices, and increases the tax rate as the program matures, more licenses come online, and the price of the product declines.

Senate Bill 516 also creates a regulatory environment that will enable the State to meet the tight timelines the bill lays out. It envisions a smooth transition of the employees of the Medical Cannabis Commission to the new Cannabis Regulation and Enforcement Division in the Alcohol, Tobacco, and Cannabis Commission. The Division is also required to issue emergency regulations prior to July 1 based on the medical cannabis regulations. This ensures that all current provisions on seed-to-sale tracking, testing, packaging, labelling, security, and other important regulatory matters will continue uninterrupted.

Intoxicating hemp products. The bill also addresses an emerging issue that threatens to undercut the State’s efforts to create a tightly regulated cannabis market – the sale of intoxicating hemp-derived products. Due to a loophole in the federal Farm Bill, some have devised a way to chemically convert cannabinoids, including CBD, from hemp plants containing the required low level of THC-9 into products containing intoxicating levels of delta-9 THC and isomers of THC including “delta-8” and “delta-10”. These products are currently sold in storefronts, gas stations, convenience stores and other retail

outlets, often without age restrictions and with signage advertising the availability of THC products and products like those (and, in many cases, more potent than) only approved for medical use in Maryland.

This is not about impacting hemp farmers or denying individuals the ability to sell products contemplated by the General Assembly as it created a Hemp Pilot Program. Nothing in Senate Bill 516 restricts the production or sale of all the products that are available – CBD, hemp seeds, food products containing hemp, fibers, clothing, car door insulation, or any of the dozens of other products that hemp advocates held out as examples of the need for hemp production.

A review of the legislative history of hemp issues reveals a simple and constant theme – hemp is not cannabis, and it does not contain enough THC to cause intoxicating effects. Great care was taken each year to differentiate hemp from cannabis, with a focus on a variety of hemp-derived consumer and industrial goods. At no time did advocates say “we want to grow a plant that can be chemically altered to produce consumer products that produce a psychoactive effect similar to cannabis.” The General Assembly never intended for hemp-derived products that “get people high” to be sold in Maryland. This bill clarifies that if a product is consumable and has intoxicating effects, it must be produced and sold through this new regulatory structure and the licensees created by Senate Bill 516, regardless of whether it is from a cannabis plant or a hemp plant that has been chemically altered to produce intoxicants.

Social Equity provisions. CANMD supports the many aspects of Senate Bill 516 that are designed to further diversify the Maryland cannabis industry and ensure the success of these new businesses. While licensing is important, it is not the only avenue to address social equity. Most notably, the bill places a temporary cap on the production capacity that July 1 entrants can utilize. CANMD supports measures to ensure that House Bill 2 licensees and new licensees can fairly compete in the new market, though member companies have slightly different perspectives on how to meet that goal. CANMD believes that it is reasonable to reserve market space for social equity and House Bill 2 licensees given the need to begin sales in July, and we are committed to supporting the success of these businesses.

Last year the General Assembly created the Cannabis Business Assistance Fund to aid new entrants in accessing capital, and Governor Moore released

\$40 million in Fiscal Year 2023 money to provide resources. Senate Bill 516 creates a Capital Access Program to further support new licensees. Existing operators have experience in applying for a license and running a business and CANMD members welcome opportunities to share that experience with new licensees. New licensees will also benefit from the assistance of the new Office of Social Equity. These provisions of the bill should be clarified to allow House Bill 2 licensees to access these programs and opportunities.

Several provisions of the bill are designed to aid licensees and impacted communities. Every new licensee must submit a detailed diversity plan and converted licensees are expected to reserve a specified amount of cannabis for social equity licensees. Uncodified language states intent that to the extent permissible under law, cannabis licensees should comply with the State's Minority Business Enterprise Program. Finally, as noted above, the Community Reinvestment and Repair Fund will redirect a portion of cannabis tax proceeds to disproportionately impacted areas.

Maintaining a medical market for patients. Senate Bill 516 recognizes that it is important to protect patient access to the medical program. It contemplates allowing certain products for use only by patients and requires dispensaries to take measures to ensure product and access for patients.

Tax provisions. CANMD supports the structure of the taxation of adult use products in Senate Bill 516. Importantly, medical cannabis remains exempt from taxation. The tax on adult use products is levied at the point of sale to the consumer, allowing for simpler inventory management approaches. As noted above, the phased-in tax allows Maryland to make progress on combatting the illicit market while yielding significant tax revenue.

High conversion fees. CANMD applauds the sponsors for a well-crafted bill that covers many topics, but we do have concerns about some of the provisions. CANMD members have always agreed that licensees should expect to pay a significant fee to convert a medical license into a license that also allows adult use sales. Last Session, we agreed with the policy decision that any fee should be paid into the Community Reinvestment and Repair Fund and be returned to communities impacted by unevenly enforced laws on cannabis.

The fee in Senate Bill 516 ranges from 13-50% of a licensee’s prior year revenue if the company is at the low end of a bracket in Section 36-403 (pages 41-42), to at least 10%. As the General Assembly recognized last year, federal tax law does not allow cannabis companies to deduct from their income routine costs of doing business that all other companies are allowed to deduct. House Bill 837 of 2022 addressed the “280E issue” for Maryland taxes, but the problem remains at the federal level. Despite perception, these are not businesses that maintain large cash balances. Setting too high a fee will require many companies to borrow funds (if a bank will provide a loan to them) to pay this fee. As proposed, the fee structure appears unbalanced, and a more equitable fee structure should be considered. Additionally, considerations for payment over time should be permitted. (House Bill 556, the cross-file to Senate Bill 516, has been amended in the House to allow for an 18-month payment period.)

Similarly, Senate Bill 516 is too vague on other fees, including license renewal fees and “registration and other fees.” Section 36-205 authorizes the Division to impose “registration and other fees” to administer the program. There is no apparent limit to what those fees could be. Finally, the renewal fee, paid every 5 years, is subject to the discretion of the Division, with the only limit being a cap of “10% of the cannabis licensee’s annual gross revenue.”

Transfer prohibition is too restrictive. Section 36-503 (pages 56-57) prevents transfer of ownership or control for 5 years following licensure. This applies to medical licensees that convert; however, these licensees have already been subject to a 3-year restriction under current law. If this provision is retained for converted licensees, it may need to be clarified to allow companies to raise equity, short of a transfer of ownership or control and the restrictive period should be shorter. Finally, while this provision exempts a transfer as a result of death of an owner, the Division should also be given the authority to establish regulations regarding disability, estate planning and intra-family transfers. (House Bill 556 has been amended in the House to accommodate these events.)

License numbers should be based on market demand. Senate Bill 516 creates a 2-round licensing timeline. While the Division has discretion to issue “not more than” a certain number of licenses, there is no requirement that there be a demonstrated need for more production. Section 36-404(g) requires that future (post Round 2) licenses be issued “as needed in

accordance with a market demand study,” but the first 2 Rounds are conducted without that analysis. The two processes are conducted within 4 months of one another, not allowing for any time to determine whether demand is adequately met through the first round, as those Round 1 licensees will yet to be established and operational.

CANMD appreciates the opportunity to comment on Senate Bill 516 and would like to work with the Committee and the legislature to develop a regulatory structure that benefits all Marylanders, and provides a safe, well-regulated product for patients and consumers.

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